

Remarks:

Claims 1-23 are currently pending in this application.

Claim Rejections – 35 U.S.C. §103

In the Final Office Action mailed August 21, 2007, claims 1-23 were rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,937,091 to Zallie et al. in view of Magnuson (Cereal Food World). Applicants again traverse said rejection on the basis that Zallie et al. fails to teach, suggest or disclose the use of a starch consisting essentially of a non-pregelatinized, modified starch as claimed in pending independent claims 1, 17 and 21.

As Applicants have previously discussed in response to the prior 35 USC 112, first paragraph rejections, the use of non-pregelatinized, modified starch in cheese compositions as claimed in independent claims 1, 17 and 21, provides for distinct processing advantages over pregelatinized modified starches. Explicit discussion of these processing advantages is found at page 9, line 18 – page 10, line 2, wherein it is stated that, “Pregelatinized starch tends to develop a higher viscosity too quickly for this application.” and that, “Applicants have discovered that that a *non-pregelatinized*, modified starch that is resistant to such breakdown tends to provide suitable viscosity characteristics during processing.”

As discussed in MPEP 2111.03, the transitional phrase “consisting essentially of” occupies a middle ground between closed claims and fully open claims and are generally construed as equivalent to comprising unless there is a clear indication in the specification of what the basic and novel characteristics are. By expressly recognizing the processing advantages afforded through the use of “non-pregelatinized, modified starches” and noting the deficiencies of “pregelatinized, modified starches”, Applicants respectfully assert a clear, express indication has been provided as to why non-pregelatinized and pregelatinized starches are not equivalent for purposes of the presently claimed invention. As such, Applicants respectfully suggest that pregelatinized starches are not equivalent for purposes of the presently claimed invention.

As has been discussed in prior responses, Zallie et al. fails to teach, suggest, or motivate one of ordinary skill in the art to utilize non-pregelatinized, modified starch as the sole starch component within a composition as presently claimed in independent claims 1, 17 and 21. In multiple places within the specification, Zallie et al. expressly teaches away from the presently claimed invention by disclosing the use of starch or starch blends comprising at least 20% pregelatinized debranched starch and in some cases, up to 100% pregelatinized starch. See ABSTRACT; col. 3, lines 8-9; col. 4, lines 16-22; col. 5, lines 39-55; col. 7, lines 62-64. Contrary to recognizing the advantageous properties of non-pregelatinized, modified starch

as taught and claimed in the present application, Zallie et al. expressly teaches the use of at least 20% pregelatinized, debranched starch.

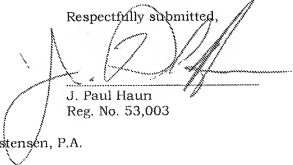
Within the Final Office Action, the Examiner has indicated that the, "...the specific type of starch ... are seen to be no more than a matter of choice and well-within the skill of the art." In past responses, Applicants have repeatedly requested the Examiner indicate that official notice has been taken that the use of specific types of starch is no more than a matter of choice and well within the skill of the art. To date, official notice has not been taken nor has evidence been provided supporting said assertion. Instead, the only evidence presented in the present case is the present application suggesting that starch choice (non-pregelatinized versus pregelatinized) does in fact matter with respect to the presently claimed invention and Zallie et al., which teaches the use of a pregelatinized, debranched starch to provide desirable textural properties in its claimed invention. The present disclosure explicitly notes deficiencies with the use of said pregelatinized starch as taught by Zallie et al. With the present disclosure expressly teaching away from Zallie et al, Applicants respectfully assert there has yet to be any evidence presented suggesting the processing advantages of non-pregelatinized, modified starches in cheese compositions as presently claimed are so notorious as to be known to one of skill in art.

Magnuson is cited merely for its disclosure of the use of wheat gluten in the preparation of cheese and as such, fails to address or cure Zallie et al.'s teaching relative to the use of at least 20% pregelatinized, debranched starch.

For at least these reasons, Applicants respectfully assert that Zallie et al. and Magnuson, considered either alone or in combination, fail to render the presently amended claims as *prima facie* obvious. As such, Applicants respectfully request reconsideration and allowance of the claims. Early notice of allowability is kindly requested. Please contact the undersigned if it will assist in expediting prosecution of these claims.

Please apply any charges or refunds to Deposit Account No. 16-0631 and provide notification of such transaction(s) to the address below.

Respectfully submitted,



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